

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

JAMES L. ASSELTINE,

Appellant,

v.

UNITED STATES OF AMERICA,

Appellee.

APPELLEE'S BRIEF

APPEAL FROM
THE UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA

WM. MATTHEW BYRNE, JR.
United States Attorney

ROBERT L. BROSIO
Assistant U.S. Attorney
Chief, Criminal Division

HENRY J. NOVAK, JR.
Assistant U.S. Attorney

1200 U. S. Court House
312 North Spring Street
Los Angeles, California 90012
Telephone: 688-2417

Attorneys for Appellee,
United States of America

TOPICAL INDEX

	<u>Page</u>
Table of Authorities	ii
I STATEMENT OF THE CASE AND JURISDICTION	1
II STATEMENT OF FACTS	2
GOVERNMENT'S COUNTER ARGUMENT NUMBER ONE: THE EVIDENCE WAS SUFFICIENT TO ESTABLISH SPECIFIC INTENT.	4
STATEMENT	4
ARGUMENT	4
CONCLUSION	6

TABLE OF AUTHORITIES

Case

Page

Clark v. United States,
293 F. 2d 445 (5th Cir. 1961)

5

Statutes

18 United States Code:

§2113(a)

1-2

28 United States Code:

§1291

1

§1294

1

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

JAMES L. ASSELTYNE,

Appellant

v.

UNITED STATES OF AMERICA

Appellee

APPELLEE'S BRIEF

I

STATEMENT OF THE CASE AND JURISDICTION

This is an appeal of a judgment of conviction entered by the United States District Court for the Central District of California, sitting without a jury, on a one-count indictment charging a violation of 18 U.S.C. §2113(a), ^{1/} — bank robbery.

Jurisdiction to review the judgment of conviction below is conferred upon this Court by the terms of 28 U.S.C. §§ 1291, 1294.

^{1/} "(a) Whoever, by force and violence, or by intimidation, takes, or attempts to take, from the person or presence of another any property or money or any other thing of value belonging to, or in the care, custody, control management, or possession of, any bank, or any savings and loan association; . . . "

STATEMENT OF FACTS

For the most part, the Government has no quarrel with the appellant's recitation of facts. However, because the sole contention on this appeal is that the Government failed to bring forth evidence sufficient to establish that Mr. Asseltyne possessed the "specific intent" to violate §2113(a), we offer a more arrant rendition of the evidence.

The date was February 20, 1967. The scene was the Security First National Bank in Burbank, California. At approximately 12:15 p.m. bank teller Carol Glazer was going about her work [R. T. 17-19], when the appellant entered the bank wearing a pair of sunglasses and carrying a black briefcase. He looked across a counter directly at Timothy Herles, the bank loan officer [R. T. 35]. Appellant wrote something on a piece of paper at the counter and then began to walk from one teller to another, progressing closer to the bank entrance with each move [R. T. 36]. Appellant terminated his movement at Mrs. Glazer's counter and handed her a piece of paper on which was written:

"HOLD UP! DONT RING ALARM! GIVE
ME ALL 100, 50, 20, 10 5'S. GUN UNDER COUNTER.
YOU HAVE 45 SECOND THEN I SHOOT."

Mrs. Glazer removed the money from her cash drawer and placed it on the counter [R. T. 18-20]. Appellant took the note and the money and fled out the front door of the bank, carrying his black

briefcase [R. T. 20]. Mrs. Glazer pressed the alarm button and exclaimed to the customer next in line, Robert Lewis, that she had been robbed [R. T. 22]. Mr. Lewis ran out the front door of the bank to find a friend of his, Burbank motorcycle policeman Hank Figette, sitting on his motorcycle. "Hey, Hank, the bank has been robbed," cried Lewis, and after receiving a description of the appellant from Lewis, Officer Figette was off on his motorcycle [R. T. 29] in the direction the appellant had gone.

Moments later Mr. Herles, the loan officer, came running out of the bank, looked down the street and saw the appellant coming out of a jewelry store, but without his sunglasses or briefcase [R. T. 38]. At Herles' cry of "Stop, robber, help!," appellant began running away down the street [R. T. 38]. Herles began the chase and was joined by Mr. Lewis. Appellant darted into a store, and, unable to ascertain which one, Herles began making brief inquiries of the successive store proprietors. An optician related that a man had entered his store moments before and Herles and Lewis proceeded into that establishment and to the rear entrance where they encountered Officer Figette, who informed them that appellant was in the optical shop [R. T. 39-41]. Officer Figette went into the store, found appellant in the men's room, and placed him under arrest [R. T. 66-67].

The black briefcase containing the robbery note, a toy gun and seven hundred ninety-five dollars (795) was found in the alley near the bank [R. T. 76-84].

GOVERNMENT'S COUNTER ARGUMENT
NUMBER ONE: THE EVIDENCE WAS
SUFFICIENT TO ESTABLISH SPECIFIC
INTENT.

STATEMENT

At the trial, appellant raised the issue of insanity. The fact question raised thereby was decided against appellant.

ARGUMENT

Implicit in the District Court's finding of guilt beyond a reasonable doubt is the resolution that specific intent was established by that same standard. The evidence is most sufficient to warrant the judgment of the court.

The issue of specific intent was raised by appellant in his closing argument to the Court, to which the judge replied:

"The question, if there is a question in this case, is the question as to whether or not the defendant had the capability of forming the specific intent to commit the act which he committed, that is, robbing the bank . . . In all of these cases, if of course, when we are talking about specific intent, the thing that demonstrates the intent more clearly than anything else is just exactly what happened and what took place. The premeditation of this bank robbery leads the

court to the unequivocal opinion that he did have the specific intent to commit the act with which he is charged.

"There is no question that the various emotional factors influenced the defendant to go ahead and do it. But whatever motivated him to go ahead and commit the bank robbery, it was done coldly, it was done specifically, it was done in a manner which was planned and well calculated.

"Therefore I have the implicit duty of finding the defendant guilty of the crime as stated in the indictment . . . The government has proved its case beyond any shadow of a doubt." [R. T. 202-203]

We believe no more elaborate statement of the law could be herein expressed in support of the court's judgment.

Although the appellant made no motion for judgment of acquittal, we feel that in the interests of justice this question should be entertained by this Court. E. g., Clark v. United States, 293 F.2d 445 (5th Cir. 1961).

Likewise, although the psychiatric report on which appellant places principle reliance in his brief was not admitted in evidence, we voice no objection to its employment by appellant in support of his position on appeal.

CONCLUSION

For the foregoing reasons the conviction should be affirmed.

Respectfully submitted

WM. MATTHEW BYRNE, JR.
United States Attorney

ROBERT L. BROSIO
Assistant U. S. Attorney
Chief, Criminal Division

HENRY J. NOVAK, JR.
Assistant U. S. Attorney

Attorneys for Appellee,
United States of America

